WP(C) 5174/2006
BEFORE
THE HON'BLE MR JUSTICE AMITAVA ROY

JUDGMENT AND ORDER (ORAL)

The challenge is to the cancellation of the petitioner's licence issued under the Assam Public Distribution of Articles Order, 1982 (hereinafter also referred to as the 'Order'), to act as a retailer in Superior Kerosene Oil for Haripur village under the Haripur Grahampur SS Ltd. This Court by order dated 28.09.2006, had kept in abeyance the impugned order dated 25.09.2006. It is submitted at the Bar that on the very same date following the cancellation of the petitioner's licence, the Assistant Director of Food & Civil Supplies, Gossaigaon, had issued a fresh licence in favour of the respondent No. 5. The said respondent has filed an application being Misc. Case No. 4189 of 2006, praying for alteration/modification/cancellation and/or vacation of the interim order.

2. I have heard Mr. S Chakrabarty, learned counsel for the petitioner and Mr. P Roy, learned State counsel for the official respondents. Also heard Mr. S Huda, learned counsel appearing for respondent No. 5.

3. The facts in brief essential for the adjudication, are that the petitioner having applied for retailer of the SK Oil before the concerned authorities of the Food & Civil Supplies Department, was issued a licence underthe Order as above on 11.12.1998. The same was renewed from time to time and lastly up to 31.03.2007. The petitioner was authorized to distribute thereunder 400 litres of SK Oil per month to the consumers of the Haripur village. In order to strengthen her hands in the business, she with the due permission of the authorities concerned authorized her brother Md. Moinul Abedin Sheikh to collect the monthly quota of SK Oil from the concerned Depot and distribute the same among the consumers within her area of operation. While the matter rested at that, she got married to one Mainul Haque of village Dharmasala Part IV in Dhubri District in the year 2004. She, however, in the meantime, having taken up a teaching assignment in a venture school in the same village continued to reside there to look after her business as well.

On 12.09.2006, the respondent No. 5 along with others, lodged a complaint with the Assistant Director of Food & Civil Supplies, Gossaigaon, alleging inter alia that the petitioner was staying with her husband in Dharmasala after her marriage and that she had faltered in the distribution of kerosene oil of the villagers to their great prejudice. Thereby, a request was also made to cancel the licence of the petitioner and grant it in favour of the respondent No. 5. On receipt of the complaint, the Assistant Director, Food & Civil Supply, Gossaigaon caused an enquiry to be conducted by the Inspector of Food & Civil Supplies, Gossaigaon, who on the completion thereof, submitted a report on 28.08.2006. Acting thereon, the Assistant Director, Food & Civil Supplies, Gossaigaon, on 08.09.2006, issued a notice to the petitioner asking her to show cause as to why in view of the revelations in the inquiry her licence should not be cancelled being a non-resident of Haripur village in Gossaigaon Sub-Division. The petitioner submitted her reply, contending inter alia that though married, she had been residing in Haripur village and not with her husband at village Dharmasala. She disclosed that in Haripur village, not only, was she attending the business adequately but also had a teaching job as Assistant Teacher in Azad M.E. Madrassa (venture school). She also mentioned that though at an earlier point of time, her name was registered in the electoral roll of the 23 Dhubri L.A. Constituency, the same had been deleted by the order dated 03.08.2006 of the Election Officer, Dhubri and that her name presently appeared in the electoral roll of 28 Gossaigaon L.A. Constituency. She categorically asserted that there was no flaw in her operation under the licence and that she was ordinarily a resident of village Haripur. She questioned the finding of the inquiry officer to the effect that she was a non-resident of the said village. By the impugned order, however, her licence was cancelled on the followed grounds:-

i) She had been married and had shifted her residence elsewhere other than the p lace specified in the licence.

ii) She was serving as an Assistant Teacher in a venture school.

iii) The area of operation had been transferred to Dhubri district along with th e population and P.D.S commodities due to creation of B.T.C.

4. The respondent No. 5, in his application referred to hereinabove , while supporting the impugned decision, has maintained that the grant of licen ce to carryon the retail business of SK Oil in his favour for the said village i n the facts and circumstances of the case, does not adversely affect any right o r interest of the petitioner and, therefore, the interim order ought to be vacat ed and the petition be dismissed. No affidavit-in-opposition has been filed by the State respondents.

5. Mr. Chakraborty, has urged that the grounds cited in the impugne d order being factually non-existent and further not recognizable in law, the sa me is null and void. Referring to the inquiry report, as well as the show cause of the petitioner, the learned counsel has argued that the finding that she is not a resident of village Haripur, on the face of the record is perverse. Witho ut prejudice to the above, Mr. Chakrabary, has maintained that residence of a ca ndidate in a particular area not being a condition of eligibility to be issued a licence under the Order, the above consideration was wholly extraneous and, the refore, the impugned decision is liable to be adjudged illegal and inoperative i n law. According to the learned counsel, a bare perusal of the inquiry report r eveals that there was no reason to complain against the services rendered by the petitioner and that her functioning being strictly as required under the licenc e and the Order, there was no conceivable justification in support of the impugn ed decision. The very fact that the same authority had issued a new licence in favour of the respondent No. 5, renders the purported plea of shifting of the ar ea of operation, non est, he urged.

6. Mr. Roy, has argued that having regard to the underlying objecti ve of a licence under the Order, the residence of the licence holder in the area to be catered to is a relevant consideration and, therefore, the impugned order cannot be faulted with. The learned State counsel, however, could not justify the issuance of the licence in favour of the respondent No. 5 by the same author ity, who had cancelled the licence of the petitioner.

7. Mr. Huda, while endorsing the submissions advanced on behalf of the State respondents, has submitted that the inquiry officer having recorded on facts that the petitioner was not a resident of Haripur village, she was not en titled to hold the licence and, therefore, the impugned decision was rightly pas sed in public interest. The respondent No. 5, having been adjudged to be suitab le therefor, the licence had been validly issued in his favour, he asserted.

8. The rival submissions have received the due consideration of thi s Court. Noticeably, the petitioner’s licence had been issued under the Order. The licence discloses that she was thereby appointed as a dealer in S.K. Oil fo r Haripur village underthe Haripur Grahampur SS Ltd. Retailier has been defin ed in Clause 2 (n) of the Order as hereunder: -

(n) retailer means an appointed dealer who sells any one or more of the notif ied articles to such holders of Family Identity Cards at such prices, in such qu antities and at such intervals of time as may be ordered by the Licensing Author ity after purchasing the same from the sub-wholesaler.

Clause 3 empowers the licensing authority to issue licences in F orm I to such appointed dealers as would be necessary from time to time specifyi ng sub-wholesalers or retailers and areas of operation of each appointed dealer.

It is categorically provided in Clause 14, that no holder of a licence issued under the Order or his agent or servant of any person acting on his behalf shall contravene any of the terms and conditions of the licence. Clause 15, though authorizes cancellation of the licence for contravention of any of the terms and conditions thereof, obligates the authority concerned to afford an opportunity of hearing to the lincensee or his agent or servant or any other person acting on his behalf before resorting to such action.

9. A conjoint reading of the Order as a whole and the Clauses of the licence, does not disclose any stipulation requiring residence of a candidate in the area concerned to be a condition of eligibility therefor. In other words, neither the Rules nor the Clauses in the licence require that for the holder of licence, he/she has to be essentially a resident of the area to be served on the strength thereof. Though, the plea of Mr. Roy, having regard to the object of the public distribution of essential commodities, the residence of the person concerned in the area, may be a relevant consideration, in absence of any legislative mandate, the same in my opinion cannot be a decisive criteria to cancel the licence, if the holder thereof, is not a resident of the concerned locality.

10. In the above view of the matter, it is considered inessential to probe into the tenability or otherwise of the finding in the inquiry that the petitioner at all relevant times was not a resident of Haripur village. This is more so, in view of her clear and unambiguous stand in the show cause that the said finding is factually incorrect and that in reality, the petitioner had been residing in the said village and apart from attending to the business of SK Oil was serving as an Assistant Teacher in Azad M.E. Madrassa located there.

11. By the same analogy of reasoning, in absence of any prescription or prohibition either in the Rules or in the Licence under the Order, debarring a person serving in an institution/organization on honorary basis to continue with the licence issued to him or her, the ground that the petitioner had been serving as Assistant Teacher of the aforementioned Madrassa, without any financial return, in my view, could not have been a relevant fact to weigh against her, in support of the impugned decision. Though, the Assistant Director of Food & Civil Supplies, Gossaigaon as the licensing authority, had in order to buttress the decision, referred to the transfer of the operational jurisdiction to Dhubri, signifying presumably that the licence issued to the petitioner would thereby be inoperative for the Haripur village, surprisingly on the very same date, the same authority had issued a fresh licence for the same area in favour of respondent No. 5. This to say the least, is in apparent contradiction to the ground cited in the impugned order. Consequently, I am constrained to hold that this ground, as well, is untenable.

12. In the above premise, the irresistible conclusion has to be that the order impugned is unsustainable in law. The same is therefore, interfered with. As a result, the communication dated 25.09.2006, (Annexure 9 to the writ petition) is hereby set aside. As a corollary, the petitioner’s licence as a retailer for Haripur village under the Haripur Grahampur SS Ltd. issued on 11.12.1998 and renewed thereafter as above, is restored. The petition is allowed in the above terms. The misc. case accordingly stands disposed. No costs.